

## REMARKS

Claims 10-19 remain in this application.

In the Office action the examiner rejected all of claims 10-19 under the judicially created doctrine of double patenting. These were the only rejections which the examiner made in the Office action.

The rejections made by the examiner against the claims in this application are as follows:

1. Claims 10-15, 17 and 18, using claims from US 6,422,070 alone,
2. Claim 16, using claims from US 6,422,070 in view of Stahl et al, and
3. Claim 19, using claims from US 6,422,070 in view of Zurek et al.

A comparison of claims 10-15, 17 and 18 in this application to claims 1, 8, 12, 17 and 20 of US 6,422,070, reveals that there are several differences between the structure being claimed in the two sets of claims. These differences include:

1. The claims of US 6,422,070 very specifically relate and position the entry plane to the outlet orifice, whereas the claims of this application do not. In fact, the disclosure of this application does not support this limitation, and thus the claims of this application could not properly include this limitation.
2. The claims of US 6,422,070 recite that the narrowing of the measuring duct is performed by the sides of the measuring duct and not by the upper/lower surfaces of the measuring duct, whereas the claims of this application recite that it is the upper/lower surfaces which converge toward each other.

3. The claims of US 6,422,070 recite an outlet orifice, whereas the claims of this application do not.

For a rejection under double patenting to be a proper rejection, if there are any elements of structure being claimed in either set of claims which is different from the other set of claims, each of these differences must be shown to be obvious. The examiner has not done so for these differences. There is nothing of record to show why the three differences mentioned above would have been obvious to one skilled in the art.

Moreover to the contrary, the three differences mentioned above are sufficient to show that the two sets of claims are patentably distinct from each other, and that the present claims should be considered to be allowable.

In particular, the claims of the patent very specifically relate the entry plane to the outlet orifice, "...said entry plane extends through the outlet orifice (46) of the measuring duct (34)...". The claims under question in this application do not recite this element of structure, and in fact the disclosure of this specification would not support this recitation. Thus, for a double patenting rejection to be proper, the examiner must show how eliminating this feature from the structure of the patent claims would have been obvious to one skilled in the art.

The examiner has not done this, and in fact has not commented on this distinction between the structure of the claims at all. This element of structure, the relative positioning of the "entry plane" and the "outlet duct", is a critical part of the structure being recited in patent 6,422,070, and eliminating it from the structure would not be obvious to one skilled in the art.

Claim 1 of US 6,422,070 includes a recitation that the "...measuring duct has a rectangular cross section which **narrows** in an axial direction." This language certainly implies that it is the sides of the measuring duct which converge toward each other over the length of the measuring duct. A reading of the specification of the patent makes it clear that this understanding is correct. In fact, according to the specification, the only surfaces which converge toward each other along the length of the measuring duct are the sides.

In contrast to this, claim 10 of this application recites "...wherein the measurement conduit has two faces (37, 38) which extend **transversely to the measurement element** (27), and that faces (37, 38) approach each other in a direction of the flow in the measurement conduit, the measurement conduit (30) having two additional faces (39, 40) which are disposed lateral to a surface (24) of the measurement element (21)." This language, especially the portion in bold type, says that it is the upper/lower surfaces of the measuring duct which approach each other. The second portion of the quoted language further supports this reading by saying that two additional faces are lateral to the surface of the measuring element, or in other words are the sides of the measuring duct.

The specification of this application further supports this reading, and in fact specifies that the lateral (side) surfaces of the measuring duct are parallel.

Thus, when the two sets of structure are compared to each other, it is clearly alternate and mutually exclusive surfaces of the measuring duct which approach each other.

The examiner has made a statement in the rejection that the approaching surfaces of the patent claims suggest that  $8^{\circ}$  is an obvious variation for the angle of the approaching sides. The examiner appears to have missed the fact that the approaching sides are different when the patent claims are compared to the application claims under consideration. It appears that the examiner is commenting with regard to claims 12 and 13 of this application, but has missed the fact that the converging surfaces are not the same as the claims of this application are compared to the claims of 6,422,070.

Again, in moving from the claims of the patent to the claims of this application, the examiner has not shown that the change of making the upper/lower surfaces converge, when compared to making the sides converge, would have been obvious to one skilled in the art.

And last, the examiner has not shown how removing the outlet orifice from the deflecting duct, as would be necessary to go from the claims of US 6,422,070 to the claims of this application, would have been an obvious modification of the structure.

Each of the above arguments are also pertinent when claims 16 and 19 are compared to the claims of US 6,422,070. And further, these claims have additional structure recited in them which makes them even more remote from the structure of the claims of US 6,422,070.

The examiner has had to add additional references, Stahl et al and Zurek et al, to try to make a rejection of these claims. But these references do not have any bearing on the elements of structure which are different when the claims of this application are compared to claims in US 6,422,070 as in the base rejection.

Thus, claims 16 and 19 should also be found to be allowable over the claims of 6,422,070 for the same reasons as claims 10-15, 17 and 18.

Reconsideration and allowance of the claims are courteously solicited.

Respectfully submitted,



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